

GAYLE M. ATHANACIO (State Bar No. 130068)  
gathanacio@sonnenschein.com  
CHRISTINE LEPERA (admitted *pro hac vice*)  
clepera@sonnenschein.com  
SONNENSCHEIN NATH & ROSENTHAL LLP  
525 Market Street, 26th Floor  
San Francisco, CA 94105-2708  
Telephone: (415) 882-5000  
Facsimile: (415) 882-0300

Attorneys for Defendant  
TEACHSCAPE, INC.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CANTER & ASSOCIATES, LLC, and  
LAUREATE EDUCATION, INC.,

**Plaintiffs,**

VS.

TEACHSCAPE, INC.,

## Defendants.

No. C 07-03225 RS

**DEFENDANT TEACHSCAPE, INC.'S  
RESPONSE TO LAUREATE  
EDUCATION, INC.'S OBJECTIONS TO  
TEACHSCAPE'S REQUEST FOR  
JUDICIAL NOTICE**

Date: April 2, 2008

Time: 9:30 a.m.

Ctrm: 4 (5<sup>th</sup> Floor)

## Honorable Richard Seeborg

1           Defendant Teachscape, Inc. (“Teachscape”) hereby responds to Plaintiff Laureate  
2 Education, Inc.’s (“Laureate”) Objections to Teachscape’s Request for Judicial Notice  
3 (“Objections”).

4           In its Objections, Laureate takes issue with Teachscape’s submission of third-party  
5 websites which reveal educational institution’s degree course offerings with similar titles to those  
6 referenced by Laureate in its First Amended Complaint (“FAC”). Interestingly, Laureate does  
7 not dispute the fact that these websites show that other universities offer similar course titles and  
8 degree programs than those referenced in the FAC; rather, Laureate suggests that by offering  
9 them, Teachscape somehow seeks to make a “categorical” allowance for the contents of websites  
10 to be considered in connection with a motion to dismiss. Laureate is mistaken. These websites,  
11 the accuracy of which is not reasonably disputed, are the proper subject of judicial notice.

12           Indeed, Laureate ignores the purpose of judicial notice in its Objection. Federal Rule of  
13 Civil Procedure 201 was “intended to obviate the need for formal fact-finding as to certain facts  
14 that are undisputed and easily verified.” *Walker v. Woodford*, 454 F. Supp. 2d 1007, 1022 (S.D.  
15 Cal. 2006) (considering motion to dismiss). The fact of which judicial notice is to be taken “must  
16 be one that only an unreasonable person would insist on disputing.” *Id., quoting United States v.*  
17 *Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994).

18           Laureate distorts this standard, and Teachscape’s Request, by stating that “just because  
19 something is posted on the Internet does not make it an indisputable fact of which a court should  
20 take judicial notice.” Laureate cites *In re Astea Int’l Inc. Sec. Litig.*, No. 06-1467, 2007 WL  
21 2306586, \*8 (E.D. Pa. Aug. 9, 2007) in support of this proposition. Yet, Teachscape is not  
22 suggesting that anything someone posts on a website is properly the subject of judicial notice.  
23 Instead, Teachscape is submitting documents readily available on the internet to show that a  
24 myriad of educational institutions offer reading and math master’s degree programs with subject  
25 matters and titles like those referenced in Laureate’s FAC. *Astea* does not support the conclusion  
26 that judicial notice of the websites would be improper here.

27           In *Astea*, a securities litigation class action, plaintiffs alleged that defendants made  
28 materially false and misleading statements concerning Astea. 2007 WL 2306586 at \*3.

1 Defendants in that case sought judicial notice of several types of documents in support of their  
 2 motion to dismiss, asserting that these documents put into context defendants' "accounting errors"  
 3 and a subsequent restatement: articles published in an accounting journal and law review journal,  
 4 a transcript of a conference call, and an Astea newsletter accessible from the company's website.  
 5 *Id.* at \*8. In denying judicial notice of these documents, the court noted that plaintiffs' claims  
 6 were not based on the documents, nor did the plaintiffs expressly rely on or allege the contents of  
 7 the documents. *Id.* Further, because the defendants proffered the documents to explain their  
 8 accounting mistakes, which plaintiffs implicitly challenged, the court found that the contents  
 9 were plainly "subject to reasonable dispute." *Id.*

10 Here, Laureate's claims are expressly based on the allegation that "the similarity of the  
 11 course titles and program curricula supports a ... general inference ... that Teachscape's materials  
 12 resulted from infringement of Laureate's copyrighted materials." Opposition to Motion to  
 13 Dismiss, p. 11 n. 2; FAC, ¶ 17 (listing course titles and suggesting significance to the alleged  
 14 similarity "in program specializations, structures, and course subject matters" with Laureate's  
 15 copyrighted works). Judicial notice of the websites Teachscape proffers is not requested in order  
 16 to put Laureate's claims into "context" as they were in *Astea*, but rather to show that as a matter of  
 17 law and indisputable fact, Laureate's allegation that the alleged similarity in course titles and/or  
 18 programs supports a reasonable inference of substantial similarity, and/or would justify filing the  
 19 present claim of copyright infringement claim, is unwarranted. Laureate's reliance on *Astea* is  
 20 misplaced, and Laureate cannot reasonably contest the contents of these websites showing the  
 21 titles and description of other educational institution's courses.

22 Courts can, and have, taken judicial notice of information contained on websites when  
 23 considering motions to dismiss. "[A]s a general matter, websites and their contents may be proper  
 24 subjects for judicial notice." *Caldwell v. Caldwell*, 2006 WL 618511 (N.D.Cal. 2006) (denying  
 25 request for judicial notice of a website on a motion to dismiss only because there were no hard  
 26 copies of the website provided). *See also Pollstar v. Gigmania, Ltd.* 170 F.Supp.2d 974  
 27 (E.D.Cal. 2000) (court took judicial notice of plaintiff's printed website in motion to dismiss);  
 28 *Wible v. Aetna Life Ins. Co.*, 375 F.Supp.2d at 965 (C.D. Cal. 2005) (taking judicial notice of

1 website from American Academy of Immunology in ERISA action); *SemMaterials, L.P. v.*  
2 *Alliance Asphalt, Inc.*, 2007 WL 269081, \*1 n.2 (D. Idaho Jan. 25, 2007) (court took judicial  
3 notice of website of law firm and information contained therein); *Helen of Troy, L.P. v. Zotos*  
4 *Corp.*, 235 F.R.D. 634, 640 (W.D. Tex. 2006) (court took judicial notice of website which noted  
5 that urea is an acid having a low pH).

6 Teachscape proffers these websites to show the indisputable fact that many online  
7 education degree program providers offer courses similar to those Laureate describes in the  
8 FAC—a fact of which this Court can take judicial notice.

9 This Court can and should take judicial notice of the identified websites attached to  
10 Teachscape's Request For Judicial Notice. Laureate's objection is without merit.

12 Date: March 5, 2008

SONNENSCHEIN NATH & ROSENTHAL LLP

14 By \_\_\_\_\_ /S/  
15 GAYLE M. ATHANACIO

16 Attorneys for Defendant  
17 TEACHSCAPE, INC.

22 27291970